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MAY 15 2001

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CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA

BY

DEPUTY

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

FILED
MAY 15 2001

MISC-00-80013-LBR

In Re:

KENNETH MICKENS,
Debtor(s).

U-SAVE AUTO RENTAL OF AMERICA,

Plaintiff(s),

vs.
KENNETH LEE MICKENS and YVETTE
MICKENS,

Defendants(s).

Chapter 7

U.S. Bankruptcy Court
For Northern District of Cal.
Case No.: 96-59506 ASW
Adv. No.: 99-5250

DATE: April 19, 2001
TIME: 10:00 a.m.

**ORDER CERTIFYING FACTS TO DISTRICT COURT FOR
DISTRICT COURT'S DETERMINATION OF CONTEMPT**

The bankruptcy court hereby enters this order certifying facts to the District Court for de novo review for the purpose of the District Court making a determination of whether or not it shall issue an order of civil contempt.

The essential facts are these: On January 29, 2001, the Bankruptcy Court's "Order Granting Motion To Compel Deposition of Maria Flemate and Request for Sanctions" ("Order To Appear," attached hereto as Exhibit "A") was filed which ordered Ms. Flemate to appear before the bankruptcy court on February 15, 2001 at 10:00 a.m. for the purpose of having her deposition taken in the above-entitled adversary proceeding. Despite the Order To Appear, Ms. Flemate did not appear for her deposition on February 15, 2001.

On March 22, 2001 the bankruptcy court entered its "Order To Show Cause Why Maria Flemate Should Not Be Sanctioned and/or Held in Contempt" ("Order For Show Cause Hearing," attached hereto as Exhibit "B"), pursuant to Fed. R. Bankr. P. 9020(b). The bankruptcy court mailed notice of the Order For Show Cause Hearing to Ms. Flemate.

CV-S-01-0554-RLH-PAL

SCANNED

① 6

1 Pursuant to the Order For Show Cause Hearing, Ms. Flemate was ordered to appear in
2 bankruptcy court on April 19, 2001 at 10:00 a.m. to show cause why she should not be
3 sanctioned and/or held in civil contempt for her failure to appear in bankruptcy court on the date
4 and time set for her deposition, which was February 15, 2001. In its Order For Show Cause
5 Hearing, this court stated that it would consider the imposition of monetary sanctions, and/or a
6 finding of civil contempt for Ms. Flemate's failure to obey the Order To Appear on February 15,
7 2001, and that the bankruptcy court could determine to certify the matter to the District Court for
8 the consideration of issuing a bench warrant for the arrest of Ms. Flemate. Furthermore, this
9 court stated in its Order For Show Cause Hearing that Ms. Flemate's failure to appear at the
10 Show Cause Hearing itself could result in additional sanctions and/or a finding of contempt, as
11 well as certification to the District Court for the consideration of the issuance a bench warrant.

12 Despite the Order For Show Cause Hearing, Ms. Flemate failed to appear in bankruptcy
13 court on April 19, 2001 for the show cause hearing.

14 Accordingly, the bankruptcy court hereby certifies these facts to the District Court for the
15 District Court's determination as to whether it shall issue an order of contempt.

16 **IT IS SO ORDERED.**

17
18 Dated: MAY 14 2001

A handwritten signature in black ink, appearing to be 'RJ', is written over a horizontal line.

1 SHARON L. KINSEY (SBN 187285)
2 Law Offices of Sharon Kinsey
3 2425 Porter Street, Suite 2
4 Soquel, California 95073
5 Telephone: (831) 465-7565
6 Facsimile: (831) 465-1006

7 Attorneys for Plaintiff,
8 U-SAVE AUTO RENTAL OF AMERICA

RECEIVED AND FILED

2001 JAN 29 P 2: 26

U.S. BANKRUPTCY COURT
PATRICIA GRAY, CLERK

9 UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF NEVADA

11 IN RE:

12 KENNETH MICKENS.

13 Debtor.

14 U-SAVE AUTO RENTAL OF AMERICA,
15 Plaintiff,

16 Vs.

17 KENNETH LEE MICKENS and YVETTE
18 MICKENS,

19 Defendants.

CHAPTER 7

MISC - 00-80013 LBR

U.S. Bankruptcy Court
For Northern District of Cal.
Case No: 96-59506 ASW
Adv. Pro. No. 99-5250
Complaint date: 7-22-99

[PROPOSED] ORDER
GRANTING MOTION TO
COMPEL DEPOSITION OF
MARIA FLEMATE AND
REQUEST FOR SANCTIONS

12-21-00

2:00 pm

20 This matter came on for regular hearing before this Court on December 21, 2000,
21 in Department 2 of this Court, located at 300 Las Vegas Blvd. So., Las Vegas, Nevada.
22 The Court, having reviewed the papers and heard the arguments of counsel, hereby orders
23 as follows:

24 FOR GOOD CAUSE SHOWN, the motion of Plaintiff U-SAVE AUTO RENTAL
25 OF AMERICA ("U-SAVE") to compel the deposition of MARIA FLEMATE, and for the
26 imposition of monetary sanctions against MARIA FLEMATE and her attorney of record,
27 in the amount of \$1,000.00, is hereby GRANTED.
28

1 The continued deposition of MARIA FLEMATE shall take place at the United
2 States Bankruptcy Court located at the Foley Federal Building, 300 Las Vegas Blvd. So.,
3 second Floor, Dept 2, before the Honorable Linda B. Riegle, on February 15, 2000, at
4 10:00 a.m.. ~~The monetary sanction, to be split evenly between counsel (if one exists) and~~
5 ~~client, shall be paid to Plaintiff's counsel no later than January 31, 2001.~~ *u*

6 IT IS SO ORDERED.

7 Submitted by:

8 
9 SHARON L. KINSEY
10

11 Dated: JANUARY 29, 2001
12

13
14 
15 UNITED STATES BANKRUPTCY COURT JUDGE
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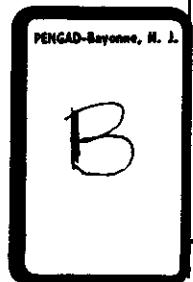
UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re:)	MISC-00-80013-LBR
)	
KENNETH MICKENS,	)	Chapter 7
Debtor(s).)	
	)	U.S. Bankruptcy Court
U-SAVE AUTO RENTAL OF AMERICA,	)	For Northern District of Cal.
	)	Case No.: 96-59506 ASW
Plaintiff(s).	)	Adv. No.: 99-5250
vs.)	
KENNETH LEE MICKENS and YVETTE	)	DATE: April 19, 2001
MICKENS,	)	TIME: 10:00 a.m.
Defendants(s).)	

**ORDER TO SHOW CAUSE WHY MARIA FLEMATE
SHOULD NOT BE SANCTIONED AND/OR HELD IN CONTEMPT**

Upon the Court's own motion, it is hereby **ORDERED** that a hearing will be held on **April 19, 2001 at 10:00 a.m.** ("Show Cause Hearing") before the Hon. Linda B. Riegle in Courtroom #2 at the Foley Federal Building, located at 300 Las Vegas Blvd. South, Las Vegas, Nevada, to show cause why Maria Flemate should not be sanctioned, and/or held in civil contempt under Fed. R. Bankr. P. 9020(b) for her failure to appear in Court on the date and time which was set for her deposition. The essential facts constituting the contempt are these: on January 29, 2001, this Court issued its "Order Granting Motion To Compel Deposition of Maria Flemate and Request for Sanctions" ("Order To Appear") which ordered Ms. Flemate to appear before this Court on February 15, 2001 at 10:00 a.m. for the purpose of having her deposition taken in the above-entitled adversary proceeding. Despite the Order To Appear, Ms. Flemate did not appear for her deposition.

SCANNED
CG



1 At the Show Cause Hearing, which is on April 19, 2001 at 10:00 a.m., this Court will
2 consider the imposition of monetary sanctions, and/or a finding of contempt for Ms. Flemate's
3 failure to obey the Order To Appear. In addition, the Court may determine to certify the matter
4 to the District Court for the consideration of issuing a bench warrant for the arrest of Ms.
5 Flemate.

6 Furthermore, Ms. Flemate's failure to appear at the Show Cause Hearing itself may result
7 in additional sanctions and/or a finding of contempt, as well as certification to the District Court
8 for the consideration of a bench warrant.

9 **IT IS SO ORDERED.**

10 DATED: 3-21-01


LINDA B. RIEGLE
United States Bankruptcy Judge

11 Copies mailed to:
12 Sharon Kinsey, Esq.
13 Maria Flemate
14 Stanley A. Zlotoff, Esq.
15 Kenneth Mickens
16
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26

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing were mailed on the 14th
day of May, 2001, by first class, United State Mail, to the parties at the addresses
listed below:

Sharon Kinsey, Esq.
2425 Porter Street, Suite 2
Soquel, CA 95073

Stanley A. Zlotoff, Esq.
300 First St., Suite 215
San Jose, CA 95113

Kenneth Mickens
c/o Stanley A. Zlotoff, Esq.
300 First St., Suite 215
San Jose, CA 95113

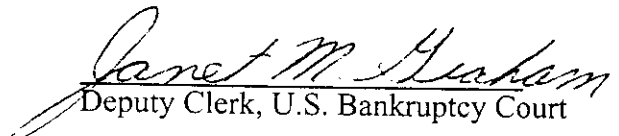
Maria Flemate
Pahrump Automotive Services Center
1340 Hwy. 372
Pahrump, NV 89041

Maria Flemate
2260 E. Deacon St.
Pahrump, NV 89041

Maria Flemate
2951 E. Deadwood Street
Pahrump, NV 89041

Maria Flemate
970 S. Highway 160
Pahrump, NV 89041

Dated: 5-14-01


Deputy Clerk, U.S. Bankruptcy Court

RECEIVED
AND FILED

JUL 15 AM 10:51

COURT
CLERKNAME Robert J. PalocsikADDRESS 8555 W. Sahara Av.# 239 - Las Vegas NV. 89117PHONE # 702-349-5490

BAR CODE _____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

MARIA FLEMATE

In re:

KENNETH MICKENS
+ YVETTE MICKENS.

Debtor

Case Number: MISC-00-80013 LBRChapter Number: 7Date: 12/21/00Time: 2:00 pm.

Trustee _____

CERTIFICATE OF ~~MAILING~~ OF: SERVICEI, Robert J. Palocsik, hereby certify that a copy ofSUBPOENA IN AN ADVERSARY PROCEEDING.

filed on the 26 day of JAN., 2001, in the above-entitled case was mailed
by me on _____, 20____, by depositing copies thereof in a sealed envelope
first-class postage prepaid, in the United States mail, to the parties and addresses indicated on the
attached mailing matrix.

DATED: 2/3/01Robert J. Palocsik PI.

SIGNATURE and TITLE

NUMBER OF NOTICES ~~MAILED~~: 4

Copies of subpoena were
Taped on Doors + Placed in Mailboxes
at 4 locations for MARIA FLEMATE

SCANNED

Copies Taped on Door + PLaced in MAILBoxes
AT The Following Locations ON 2/3/01

- 1- 2260 E. Deacon St. Pahrump NV.
- 2- 2951 E. DEADWOOD St. Pahrump. NV.
- 3- 1340 W Hwy 372, Pahrump NV.
- 4- 970 S. Hwy 160, Pahrump. NV.

MAR 21 10 20 AM '01

UNITED STATES BANKRUPTCY COURT **ENTERED** **MAR 22 2001**
DISTRICT OF NEVADA

* * * * *

In Re:	)	MISC-00-80013-LBR
)	
KENNETH MICKENS,	)	Chapter 7
Debtor(s).)	
	)	U.S. Bankruptcy Court
U-SAVE AUTO RENTAL OF AMERICA,	)	For Northern District of Cal.
	)	Case No.: 96-59506 ASW
Plaintiff(s),	)	Adv. No.: 99-5250
vs.)	
KENNETH LEE MICKENS and YVETTE	)	DATE: April 19, 2001
MICKENS,	)	TIME: 10:00 a.m.
Defendants(s).)	

**ORDER TO SHOW CAUSE WHY MARIA FLEMATE
SHOULD NOT BE SANCTIONED AND/OR HELD IN CONTEMPT**

Upon the Court's own motion, it is hereby **ORDERED** that a hearing will be held on **April 19, 2001 at 10:00 a.m.** ("Show Cause Hearing") before the Hon. Linda B. Riegle in Courtroom #2 at the Foley Federal Building, located at 300 Las Vegas Blvd. South, Las Vegas, Nevada, to show cause why Maria Flemate should not be sanctioned, and/or held in civil contempt under Fed. R. Bankr. P. 9020(b) for her failure to appear in Court on the date and time which was set for her deposition. The essential facts constituting the contempt are these: on January 29, 2001, this Court issued its "Order Granting Motion To Compel Deposition of Maria Flemate and Request for Sanctions" ("Order To Appear") which ordered Ms. Flemate to appear before this Court on February 15, 2001 at 10:00 a.m. for the purpose of having her deposition taken in the above-entitled adversary proceeding. Despite the Order To Appear, Ms. Flemate did not appear for her deposition.

COPIES
 CC

4.5

1 At the Show Cause Hearing, which is on **April 19, 2001 at 10:00 a.m.**, this Court will
2 consider the imposition of monetary sanctions, and/or a finding of contempt for Ms. Flemate's
3 failure to obey the Order To Appear. In addition, the Court may determine to certify the matter
4 to the District Court for the consideration of issuing a bench warrant for the arrest of Ms.
5 Flemate.

6 Furthermore, Ms. Flemate's failure to appear at the Show Cause Hearing itself may result
7 in additional sanctions and/or a finding of contempt, as well as certification to the District Court
8 for the consideration of a bench warrant.

9 **IT IS SO ORDERED.**

10 DATED: 3-21-01


LINDA B. RIEGLE
United States Bankruptcy Judge

11 Copies mailed to:
12 Sharon Kinsey, Esq.
13 Maria Flemate
14 Stanley A. Zlotoff, Esq.
15 Kenneth Mickens
16
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1 SHARON L. KINSEY (SBN 187285)
2 Law Offices of Sharon Kinsey
3 2425 Porter Street, Suite 2
4 Soquel, California 95073
5 Telephone: (831) 465-7565
6 Facsimile: (831) 465-1006

7 Attorneys for Plaintiff,
8 U-SAVE AUTO RENTAL OF AMERICA

RECEIVED AND FILED

2001 JAN 29 P 2: 26

U.S. BANKRUPTCY COURT
NORTH D. CAL. CLERK

9 UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF NEVADA

11 IN RE:

12 KENNETH MICKENS,

13 Debtor.

14 U-SAVE AUTO RENTAL OF AMERICA,

15 Plaintiff,

16 Vs.

17 KENNETH LEE MICKENS and YVETTE
18 MICKENS,

19 Defendants.

CHAPTER 7

MISC - 00-80013 LBR

U.S. Bankruptcy Court
For Northern District of Cal.
Case No: 96-59506 ASW
Adv. Pro. No. 99-5250
Complaint date: 7-22-99

[PROPOSED] ORDER
GRANTING MOTION TO
COMPEL DEPOSITION OF
MARIA FLEMATE AND
REQUEST FOR SANCTIONS

12-21-00

2:00 pm

21 This matter came on for regular hearing before this Court on December 21, 2000,
22 in Department 2 of this Court, located at 300 Las Vegas Blvd. So., Las Vegas, Nevada.
23 The Court, having reviewed the papers and heard the arguments of counsel, hereby orders
24 as follows:

25 FOR GOOD CAUSE SHOWN, the motion of Plaintiff U-SAVE AUTO RENTAL
26 OF AMERICA ("U-SAVE") to compel the deposition of MARIA FLEMATE, and for the
27 imposition of monetary sanctions against MARIA FLEMATE and her attorney of record,
28 in the amount of \$1,000.00, is hereby GRANTED.

1 The continued deposition of MARIA FLEMATE shall take place at the United
2 States Bankruptcy Court located at the Foley Federal Building, 300 Las Vegas Blvd. So.,
3 second Floor, Dept 2, before the Honorable Linda B. Riegle, on February 15, 2000, at
4 10:00 a.m.. ~~The monetary sanction, to be split evenly between counsel (if one exists) and~~
5 ~~client, shall be paid to Plaintiff's counsel no later than January 31, 2001.~~ *u*

6 IT IS SO ORDERED.

7 Submitted by:

8 
9 SHARON L. KINSEY
10

11 Dated: JANUARY 29, 2001
12

13
14 
15 UNITED STATES BANKRUPTCY COURT JUDGE
16
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SHARON L. KINSEY (SBN 187285)
Law Offices of Sharon Kinsey
2425 Porter Street, Suite 2
Soquel, California 95073
Telephone: (831) 465-7565
Facsimile: (831) 465-1006

Attorneys for Plaintiff,
U-SAVE AUTO RENTAL OF AMERICA

2000 NOV 29 PM 1:07

U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE, CALIFORNIA

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

IN RE:

KENNETH MICKENS,

Debtor.

U-SAVE AUTO RENTAL OF AMERICA,

Plaintiff,

Vs.

KENNETH LEE MICKENS and YVETTE
MICKENS,

Defendants.

CHAPTER 7

MISC-00-80013 LBR

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CA
Case No: 96-59506 ASW
Adv. Pro. No. 99-5250
Complaint date: 7-22-99

NOTICE OF MOTION &
MOTION TO COMPEL
DEPOSITION OF MARIA
FLEMATE & REQUEST FOR
SANCTIONS; POINTS &
AUTHORITIES;
DECLARATION OF SHARON
KINSEY

DATE: December 21, 2000
TIME: 2:00
DEPT: 2

The Hon. L. B. Riegle

TO DEFENDANTS AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on December 21, 2000 at 2:00 p.m., or as soon
thereafter as the matter may be heard, in Department 2 of this Court, located at 300 Las
Vegas Blvd., Las Vegas, Nevada, Plaintiff U-SAVE AUTO RENTAL OF AMERICA
("U-SAVE") will move for an Order compelling the deposition of Maria Flemate, and for

USAVE V. MICKENS
NOTICE OF MOTION AND MOTION TO COMPEL

1 the imposition of monetary sanctions against Ms. Flemate and her attorney of record, in
2 the amount of \$ 3694.00.

3 This motion is made on the grounds that Maria Flemate has failed and refused to
4 appear to be deposed, that her deposition will reasonably lead to the discovery of
5 admissible evidence, and that good cause exists for compelling her to comply with
6 Plaintiff's requested deposition and the production of documents, i.e., for effective trial
7 preparation and to prevent surprise at trial. Further, Plaintiff made a good faith attempt at
8 informal resolution of the issue by communicating with Maria Flemate prior to making
9 this motion.

10 This motion will be based on this notice of motion, the memorandum of points and
11 authorities, the declaration of Sharon L. Kinsey, the papers and records on file herein, and
12 on such evidence as may be presented at the hearing of this matter.

13 MEMORANDUM OF POINTS AND AUTHORITIES

14 I.

15 FACTUAL SUMMARY

16 This case arises from a franchise agreement granted to Automart by U-SAVE on
17 August 28, 1997. As part of the franchise agreement, U-SAVE provided 13 new
18 vehicles to Automart for use in Automart's car rental operation. In March 1998,
19 Automart stopped making the required franchise payments to U-SAVE and on or about
20 August 1998 closed its doors. U-SAVE recovered all but five of the vehicles entrusted
21 to Automart. Some of the vehicles were found at Bay Cities Auto Auction, and others
22 were located after being contacted by various lenders. On August 31, 1998, the DMV in
23 San Leandro reported that at least four of the missing vehicles had "pending master files,"
24 meaning the vehicles had been sold.

25 Plaintiff served all Defendants on November 13, 1998, for case No. 805777-2 in
26 the Superior Court of Alameda County, California.

27 On May 27, 1999, Defendant Ken Mickens filed a Chapter 7 Bankruptcy petition
28 in the U.S. Bankruptcy Court in San Jose, California, No. 96-59506ASW. On July 22,

1 1999, Plaintiff filed a Complaint to Determine Dischargeability of Debt and Entitlement
2 to Discharge for Ken Mickens (U.S. Bankruptcy Court, Norther District of California
3 Case No. 99-5250ASW.), alleging fraud, and willful and malicious conversion.

4 This case involves issues and conduct taking place at or surrounding Defendant
5 Kenneth Lee Mickens' place of business. Maria Flemate was/is employed at that
6 business. Ms. Flemate handled both financial and administrative business transactions.
7 She has pertinent and material information concerning the business.

8 II.

9 PROCEDURAL BACKGROUND

10 Plaintiff has set Ms. Flemate's deposition on two prior occasions, meeting and
11 conferring with her each time to arrange the dates. Ms. Flemate appears to be
12 unrepresented in her status as a witness in this case, although this office has received
13 correspondence on her behalf from defendant Mickens' attorney Stanley Zlotoff. Mr.
14 Zlotoff represents Defendants Ken and Yvette Mickens, thus a serious conflict would
15 exist as to his representation of Ms. Flemate.

16 Plaintiff originally set Ms. Flemate's deposition for July 14, 2000. She failed to
17 appear. Plaintiff reset the deposition for September 19, 2000, and again she failed to
18 appear. Ms. Flemate now claims medical reasons for not appearing. The parties have
19 been unable to agree to a date for the deposition of Ms. Flemate, or to resolve the issue of
20 Ms. Flemate's refusal to comply with the noticed deposition.

21 III.

22 LAW & ARGUMENT

23 A. PLAINTIFF IS ENTITLED TO DEPOSE MS. FLEMATE

24 Plaintiff may obtain discovery by oral deposition on any matter, not privileged,
25 relevant to the subject matter of the litigation. Federal Rules of Civil Procedure
26 ("FRCP") 26(a)(5), (b)(1). Pursuant to FRCP 45(a)(1)(C), a nonparty may be
27 commanded to attend a deposition and produce documents. The method to secure the
28 attendance of a nonparty witness at deposition is by service of a subpoena. FRCP 30(a),

1 45. Depositions are the only way to obtain testimony and documents from a nonparty
2 witness. *Penn. Railroad v. The Marie Leonhardt*, 179 F.Supp. 437, 438 (1959). Failure
3 to comply with a subpoena without adequate excuse is a contempt of court. FRCP 45(e).

4 As set forth above, the underlying litigation involves Defendant Micken's
5 business, and Ms. Flemate is/was employed in that business. As such, Ms. Flemate is a
6 critical percipient witness. To date, Plaintiff has noticed the deposition of Ms. Flemate on
7 two separate occasions and communicated several times with the witness to obtain her
8 compliance. Ms. Flemate failed or refused to appear, canceling at the last moment on
9 both occasions. Such conduct is sanctionable.

10 A party may not remain completely silent when he or she regards a notice to take
11 his or her deposition as improper and objectionable. "If she desires not to appear or not to
12 respond, she must apply for a protective order." FRCP 37 advisory committee's note

13 Ms. Flemate has failed to properly object to the subpoena or seek a protective
14 order as required. The physician's assistant's note that was faxed to Plaintiff's counsel is
15 insufficient to excuse Ms. Flemate from complying with a valid subpoena. Her refusal to
16 be deposed is a ruse to impose hardships on Plaintiff, delay the discovery process, and
17 prejudice Plaintiff at trial. Due to Ms. Flemate's continued refusal to appear at her
18 deposition, Plaintiff has been denied an opportunity to prepare for trial, and to obtain
19 information necessary to the preparation of Plaintiff's case.

20 **B. SANCTIONS ARE WARRANTED FOR MS. FLEMATE'S CONDUCT**

21 Pursuant to FRCP 37(d), if a deponent fails to appear at the deposition after being
22 served with a proper notice, the court in which the action is pending may make "such
23 orders in regard to the failure as are just" The Court "*shall require* the party failing
24 to act or the attorney advising that party or both to pay the reasonable expenses, including
25 attorney's fees, caused by the failure" FRCP 37(d) (emphasis added). Accordingly,
26 Plaintiff seeks sanctions in the amount of \$3,169.00.

27 ///

28 ///

C. RELIEF FROM THE NOVEMBER 8, 2000 DISCOVERY CUTOFF DATE IS APPROPRIATE

Plaintiff has steadily proceeded with attempts to finish all discovery and depositions prior to the Court imposed discovery cutoff deadline of November 8, 2000. As set forth in the accompanying declaration, Maria Flemate has repeatedly failed and refused to be deposed, and her deposition is essential to Plaintiff's trial preparation. It is imperative that the deposition of Maria Flemate, an unrepresented third party, be deposed to uncover the facts in this case. Ms. Flemate stated that she has been advised by counsel to object to her scheduled deposition, however, Plaintiff's counsel has never been provided with the name of any attorney of record for Ms. Flemate. Plaintiff has attempted to meet and confer with Ms. Flemate on this issue to no avail.

Therefore, Plaintiffs request that the Court grant relief from the discovery cutoff date to allow sufficient time to complete Ms. Flemate's deposition and for time to complete any follow up discovery, which can only become known after the completion of Ms. Flemate's deposition.

IV.

CONCLUSION

Pursuant to FRCP 37 and FRCP 26, the Court has wide discretion to make orders which justice requires to protect Plaintiff from hardship and prejudice. Ms. Flemate's failure to appear at her deposition prejudices Plaintiff in its trial preparation.

Plaintiff requests that the Court issue an order compelling the deposition of Ms. Flemate, that the Court impose sanctions in the amount of \$3,694.00 for her delay tactics and her willful refusal to be deposed, and that the Court offer relief from the discovery cutoff date to allow sufficient time to complete further discovery as may be revealed by Ms. Flemate's deposition.

Dated: November 27, 2000

LAW OFFICES OF SHARON KINSEY

By 
SHARON L. KINSEY
Attorneys for Plaintiff, USAVE AUTO RENTAL

**DECLARATION OF SHARON L. KINSEY
IN SUPPORT OF MOTION TO COMPEL**

I, Sharon L. Kinsey, declare:

1. I am an attorney at law duly admitted to practice before all the courts of the State of California and the attorney of record herein for Plaintiff.
2. This office originally noticed Ms. Flemate's deposition for July 14, 2000. The subpoena was personally served on Ms. Flemate on June 30, 2000. (A true and correct copy of the deposition notice and proof of service is attached collectively as **EXHIBIT A**).
3. On July 14, 2000, I appeared at the offices of Laurie Webb in Nevada for the purpose of taking the deposition of Ms. Flemate. Ms. Flemate did not appear. (A true and correct copy of the reporter's transcript made on that date is attached as **EXHIBIT B**).
4. On August 11, 2000, this office caused to be served on Ms. Flemate, a new deposition subpoena, issued by the court in Nevada, to appear on September 19, 2000 for her deposition. The regular process service attempted to serve Ms. Flemate with the subpoena several times, but was threatened with arrest by Ken Mickens. Thereafter, the Nye County Sheriff's office successfully served the subpoena. (A true and correct copy of the deposition subpoena with proofs of service are collectively attached as **EXHIBIT C**).
5. On August 28, 2000, this office received correspondence from Ms. Flemate, dated August 11, 2000, stating that "her attorney" advised her to object to our deposition subpoena. (A true and correct copy of the letter is attached as **EXHIBIT D**).
6. On September 6, 2000, the Nye County Sheriff's Office personally served Ms. Flemate with a copy of a letter advising her of the need to confirm deposition dates by September 22, 2000. (True and correct copies of this letter and the proof of service is attached collectively as **EXHIBIT E**).
7. On September 18, 2000, this office received a facsimile from Advanced Medical Center stating that Ms. Flemate was under their care for "mental anguish resulting

1 from personal stressors” and excusing Ms. Flemate from participating in any
2 depositions in the near future. (A true and correct copy of this facsimile is
3 attached as **EXHIBIT F**).

4 8. On September 22, 2000, this office spoke directly to Ms. Flemate regarding her
5 deposition and Ms. Flemate agreed to reschedule the deposition in a timely manner
6 after her doctors appointment on September 20, 2000. (A true and correct copy of
7 correspondence confirming this conversation by facsimile is attached as **EXHIBIT**
8 **G**).

9 9. On 9-22-00, this office received correspondence from Ms. Flemate cancelling any
10 depositions for at least one month. (A true and correct copy of this letter is
11 attached as **EXHIBIT H**).

12 10. My usual and customary billing rate for this case is \$150.00 per hour.

13 11. On July 14, 2000, I flew to Las Vegas, Nevada to attend the deposition of Ms.
14 Flemate. The following expenses were incurred on that trip for which Ms. Flemate
15 failed to appear:

- 16 a. Airfare: \$219.00
- 17 b. Ground transportation: \$60.00
- 18 c. Reporter's time and transcript: \$153.00
- 19 d. Subpoena fees: \$187.00
- 20 e. 8 hours of attorney time: \$1,200.00


21 12. I spent six attorney hours preparing this motion and the accompanying papers and
22 exhibits for a total of \$900.00 and my paralegal spent three hours preparing the
23 Request for Miscellaneous Case Number in the Nevada Court with necessary
24 exhibits for a total of \$375.00.

25 13. I anticipate than an additional three hours will be required to review the opposing
26 papers and to prepare a reply brief for a total of \$450.00. This office will incur a
27 fee of \$150.00 to hire an attorney in Nevada to appear at said motion on December
28 21, 2000. Therefore, I request that the Court impose sanctions in the amount of

1 **\$3,694.00** against Ms. Flemate and/or attorney advising her to avoid deposition, in
2 favor of Plaintiff.

3 I declare under penalty of perjury and the laws of the State of California that the
4 foregoing is true and correct. This declaration is made on November 26, 2000, at Soquel,
5 California.

6 LAW OFFICES OF SHARON L. KINSEY

7
8 By: 
9 SHARON KINSEY
10 Attorneys for Plaintiff,
11 U-SAVE AUTO RENTAL OF AMERICA
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DECLARATION OF SERVICE
USAVE v. AUTOMART

I, CHERYL SNIDER, declare:

I am employed by the law firm of THE LAW OFFICES OF SHARON KINSEY. My business address is 2425 Porter Street, Suite 2, Soquel, California, 95073. I am over the age of 18 years and not a party to this action.

On November 28, 2000, I served the following document(s) set forth below in the manner indicated:

(X) **Via Facsimile**: By facsimile machine at the fax number(s) shown below. I caused the machine to print a transmission record of the transmission and no error was reported by the machine.

(X) **Personal Service**: By delivering a copy to Fax & File Legal Services for personal service on Stanley Zlotoff only, at the address indicated, with a proof of personal service this date to be filed at a later time by the process server.

() **Service by Mail (Deposit)**: By enclosing a copy in an envelope addressed as shown below and depositing the sealed envelope with the United States Postal Service in Soquel, California, with the postage fully prepaid.

Document(s) Served: NOTICE OF MOTION AND MOTION TO COMPEL DEPOSITION OF MARIA FLEMATE & REQUEST FOR SANCTIONS; POINTS AND AUTHORITIES; DECLARATION OF SHARON KINSEY; and [PROPOSED] ORDER GRANTING MOTION TO COMPEL DEPOSITION OF MARIA FLEMATE AND REQUEST FOR SANCTIONS

Person(s) Served:

Stanley A. Zlotoff, Esq.
300 First Street, Suite 215
San Jose, CA 95113
Facsimile: (408) 287-7645
Atty for Kenneth & Yvette Mickens

Ms. Maria Flemate (Served via facsimile only as plaintiff is unaware of mailing address)
Pahrump, NV
Facsimile: (775) 727-4279

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration was executed on November 28, 2000, at Soquel, California.



CHERYL SNIDER

TRANSACTION REPORT

Transmission

Transaction(s) completed

NO.	TX DATE/TIME	DESTINATION	DURATION	PGS.	RESULT	MODE
190	NOV. 28 11:58	408 287 7645	0' 03' 18"	011	OK	N ECM

1 SHARON L. KINSEY (SBN 187285)
2 Law Offices of Sharon Kinsey
3 2425 Porter Street, Suite 2
4 Soquel, California 95073
5 Telephone: (831) 465-7565
6 Facsimile: (831) 465-1006

7 Attorneys for Plaintiff,
8 U-SAVE AUTO RENTAL OF AMERICA

9 UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF NEVADA

11 IN RE:

12 KENNETH MICKENS,

13 Debtor.

14 U-SAVE AUTO RENTAL OF AMERICA,

15 Plaintiff,

16 Vs.

17 KENNETH LEE MICKENS and YVETTE
18 MICKENS,

19 Defendants.

CHAPTER 7

MISC-00-80013 LBR

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CA
Case No: 96-59506 ASW
Adv. Pro. No. 99-5250
Complaint date: 7-22-99

NOTICE OF MOTION &
MOTION TO COMPEL
DEPOSITION OF MARIA
FLEMATE & REQUEST FOR
SANCTIONS; POINTS &
AUTHORITIES;
DECLARATION OF SHARON
KINSEY

DATE: December 21, 2000

TRANSACTION REPORT

Transmission

Transaction(s) completed

NO.	TX	DATE/TIME	DESTINATION	DURATION	PGS.	RESULT	MODE
191	NOV. 28	12:02	7757274279	0' 04' 04"	011	OK	N ECM

SHARON L. KINSEY (SBN 187285)
Law Offices of Sharon Kinsey
2425 Porter Street, Suite 2
Soquel, California 95073
Telephone: (831) 465-7565
Facsimile: (831) 465-1006

Attorneys for Plaintiff,
U-SAVE AUTO RENTAL OF AMERICA

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

IN RE:

KENNETH MICKENS,

Debtor.

U-SAVE AUTO RENTAL OF AMERICA,

Plaintiff,

Vs.

KENNETH LEE MICKENS and YVETTE
MICKENS,

Defendants.

CHAPTER 7

MISC-00-80013 LBR

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CA
Case No: 96-59506 ASW
Adv. Pro. No. 99-5250
Complaint date: 7-22-99

NOTICE OF MOTION &
MOTION TO COMPEL
DEPOSITION OF MARIA
FLEMATE & REQUEST FOR
SANCTIONS; POINTS &
AUTHORITIES;
DECLARATION OF SHARON
KINSEY

DATE: December 21 2000

SHARON L. KINSEY (SBN 187285)
Law Offices of Sharon Kinsey
2425 Porter Street, Suite 2
Soquel, California 95073
Telephone: (831) 465-7565
Facsimile: (831) 465-1006

RECEIVED
AND FILED

NOV 17 2000

Attorneys for Plaintiff,
U-SAVE AUTO RENTAL OF AMERICA

U.S. BANKRUPTCY COURT
PATRICIA GRAY CLERK

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

IN RE:

KENNETH MICKENS,

Debtor.

U-SAVE AUTO RENTAL OF AMERICA,

Plaintiff,

Vs.

KENNETH LEE MICKENS and YVETTE
MICKENS,

Defendants.

CHAPTER 7

Case No: *MISC-00-80013 LBR*

Adv. Pro.

California Adv. Pro. 99-5250

California Case No: 96-59506

ASW

Complaint date: 7-22-99

PLAINTIFF'S REQUEST FOR A
MISCELLANEOUS CASE
NUMBER FOR THE PURPOSE
OF HEARING ATTACHED
MOTION TO COMPEL MARIA
FLEMATE FOR DEPOSITION
AND FOR SANCTIONS FOR
VIOLATION OF SUBPOENA

DATE: *12/21/00*

TIME:

DEPT: *2:00*

The Hon. *L.B. Riegler*

TO THE JUDGE OF THE U.S. BANKRUPTCY COURT, DISTRICT OF NEVADA:

Plaintiff in the above referenced case is requesting a miscellaneous action number for the purpose of holding a Motion to Compel the Deposition of Maria Flemate and Request for Sanctions for violation of subpoena for deposition. Ms. Flemate is a third party and is a resident of Phurump, Nevada. On November 2, 2000, Plaintiff brought this same motion before the Judge of the U.S. Bankruptcy Court, Northern District of

1 California (Honorable Arthur Weissbrodt) Case Number 96-59506 ASW (See Attached
2 Exhibit A). The Court directed Plaintiff to immediately re-file the motion to compel and
3 request for sanctions in the district where the discovery is to be taken. FRCP 37(a)(1).
4 The Court further extended the discovery cut off date in this action until January 31,
5 2000 in order to have this same motion heard in the U.S. Bankruptcy Court District of
6 Nevada.

7 Dated: November 15, 2000

Respectfully submitted,

8 LAW OFFICES OF SHARON KINSEY

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10 By: 
11 Sharon L. Kinsey, Attorney for
12 Plaintiff
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1 SHARON L. KINSEY (SBN 187285)

2 Law Offices of Sharon Kinsey

3 2425 Porter Street, Suite 2

4 Soquel, California 95073

5 Telephone: (831) 465-7565

6 Facsimile: (831) 465-1006

7 Attorneys for Plaintiff,

8 U-SAVE AUTO RENTAL OF AMERICA

9 UNITED STATES BANKRUPTCY COURT

10 FOR THE DISTRICT OF NEVADA

11 IN RE:

12 KENNETH MICKENS,

13 Debtor.

14 U-SAVE AUTO RENTAL OF AMERICA,

15 Plaintiff,

16 Vs.

17 KENNETH LEE MICKENS and YVETTE
MICKENS,

18 Defendants.

) CHAPTER 7

) Miscellaneous Case No:

) Adv. Pro. No. 99-5250

) Case No: 96-59506 ASW

) Complaint date: 7-22-99

) Trial date:

) [PROPOSED] ORDER
) GRANTING PLAINTIFF'S A
) MISCELLANEOUS CASE
) NUMBER and HEARING DATE
) FOR MOTION TO COMPEL
) DEPOSITION OF MARIA
) FLEMATE AND REQUEST
) FOR SANCTIONS

) Hearing date:

) Time:

) Dept:

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21 This matter having been reviewed by a United States Bankruptcy Judge in the
22 District of Nevada in Department ____ of this Court, located at 300 Las Vegas Blvd, Las
23 Vegas, Nevada and the Court, having reviewed the papers attached as Exhibit A of
24 Plaintiffs Request for Miscellaneous Case Number in Nevada Bankruptcy Court, hereby
25 orders as follows:

26 FOR GOOD CAUSE SHOWN, the request for a temporary case number to be
27 assigned for the purpose of a hearing for the motion of Plaintiff U-SAVE AUTO
28

1 RENTAL OF AMERICA ("U-SAVE") to compel the deposition of MARIA FLEMATE,
2 and for the imposition of monetary sanctions against MARIA FLEMATE and her
3 attorney of record is granted as follows:

4 The case number assigned in the Nevada District Bankruptcy Court _____ the
5 date for the Motion to Compel the Deposition of Maria Flemate and Request for
6 Sanctions _____, 2000 the time of said hearing _____ in Dept_____.
7

8 **IT IS SO ORDERED.**

9 Dated: _____
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12 _____
13 UNITED STATES BANKRUPTCY COURT JUDGE
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1 SHARON L. KINSEY (SBN 187285)
2 Law Offices of Sharon Kinsey
3 2425 Porter Street, Suite 2
4 Soquel, California 95073
5 Telephone: (831) 465-7565
6 Facsimile: (831) 465-1006
7
8 Attorneys for Plaintiff,
9 U-SAVE AUTO RENTAL OF AMERICA

10 UNITED STATES BANKRUPTCY COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 IN RE:

13 KENNETH MICKENS,

14 Debtor.

15 U-SAVE AUTO RENTAL OF AMERICA,

16 Plaintiff,

17 Vs.

18 KENNETH LEE MICKENS and YVETTE
19 MICKENS,

20 Defendants.

CHAPTER 7

Case No: 96-59506 ASW

Adv. Pro. No. 99-5250

Complaint date: 7-22-99

NOTICE OF MOTION &
MOTION TO COMPEL
DEPOSITION OF MARIA
FLEMATE & REQUEST FOR
SANCTIONS; POINTS &
AUTHORITIES;
DECLARATION OF SHARON
KINSEY

DATE: November 2, 2000

TIME: 2:15

DEPT: 3099

The Hon. Arthur S. Weissbrodt

21 TO DEFENDANTS AND THEIR ATTORNEY OF RECORD:

22 PLEASE TAKE NOTICE that on November 2, 2000 at 2:15 p.m., or as soon
23 thereafter as the matter may be heard, in Department 3099 of this Court, located at 280
24 South 1st Street, San Jose, California, Plaintiff U-SAVE AUTO RENTAL OF AMERICA
25 ("U-SAVE") will move for an Order compelling the deposition of Maria Flemate, and for
26
27
28

BY FAX

1 the imposition of monetary sanctions against Ms. Flemate and her attorney of record, in
2 the amount of \$3,169.00.

3 This motion is made on the grounds that Maria Flemate has failed and refused to
4 appear to be deposed, that her deposition will reasonably lead to the discovery of
5 admissible evidence, and that good cause exists for compelling her to comply with
6 Plaintiff's requested deposition and the production of documents, i.e., for effective trial
7 preparation and to prevent surprise at trial. Further, Plaintiff made a good faith attempt at
8 informal resolution of the issue by communicating with Maria Flemate prior to making
9 this motion.

10 This motion will be based on this notice of motion, the memorandum of points and
11 authorities, the declaration of Sharon L. Kinsey, the papers and records on file herein, and
12 on such evidence as may be presented at the hearing of this matter.

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I.**

15 **FACTUAL SUMMARY**

16 This case arises from a franchise agreement granted to Automart by U-SAVE on
17 August 28, 1997. As part of the franchise agreement, U-SAVE provided 13 new
18 vehicles to Automart for use in Automart's car rental operation. In March 1998,
19 Automart stopped making the required franchise payments to U-SAVE and on or about
20 August, 1998 closed its doors. U-SAVE recovered all but five of the vehicles entrusted
21 to Automart. Some of the vehicles were found at Bay Cities Auto Auction, and others
22 were located after being contacted by various lenders. On August 31, 1998, the DMV in
23 San Leandro reported that at least four of the missing vehicles had "pending master files,"
24 meaning the vehicles had been sold.

25 Plaintiff served all Defendants on November 13, 1998, for case No. 805777-2 in
26 the Superior Court of Alameda County.

27 On May 27, 1999, Defendant Ken Mickens filed a Chapter 7 Bankruptcy petition
28 in the U.S. Bankruptcy Court in San Jose, California, No. 96-59506ASW. On July 22,

1 1999, Plaintiff filed a Complaint to Determine Dischargeability of Debt and Entitlement
2 to Discharge for Ken Mickens (Case No. 99-5250ASW.), alleging fraud, and willful and
3 malicious conversion.

4 This case involves issues and conduct taking place at or surrounding Defendant
5 Kenneth Lee Mickens' place of business. Maria Flemate was/is employed at that
6 business. Ms. Flemate handled both financial and administrative business transactions.
7 She has pertinent and material information concerning the business.

8 **II.**

9 **PROCEDURAL BACKGROUND**

10 Plaintiff has set Ms. Flemate's deposition on two prior occasions, meeting and
11 conferring with her each time to arrange the dates. Ms. Flemate appears to be
12 unrepresented as to her status as a witness in this case, although this office has received
13 correspondence on her behalf from defendant Mickens' attorney Stanley Zlotoff. Mr.
14 Zlotoff represents Defendants Ken and Yvette Mickens, thus a serious conflict would
15 exist as to his representation of Ms. Flemate.

16 Plaintiffs originally set Ms. Flemate's deposition for July 14, 2000. She failed to
17 appear. Plaintiff reset the deposition for September 19, 2000 and again she failed to
18 appear. Ms. Flemate now claims medical reasons for not appearing. The parties have
19 been unable to agree to a date for the deposition of Ms. Flemate, or to resolve the issue of
20 Ms. Flemate's refusal to comply with the noticed deposition.

21 **III.**

22 **LAW & ARGUMENT**

23 **A. PLAINTIFF IS ENTITLED TO DEPOSE MS. FLEMATE**

24 Plaintiff may obtain discovery by oral deposition on any matter, not privileged,
25 relevant to the subject matter of the litigation. Federal Rules of Civil Procedure
26 ("FRCP") 26(a)(5), (b)(1). Pursuant to FRCP 45(a)(1)(C), a nonparty may be
27 commanded to attend a deposition and produce documents. The method to secure the
28 attendance of a nonparty witness at deposition is by service of a subpoena. FRCP 30(a),

1 45. Depositions are the only way to obtain testimony and documents from a nonparty
2 witness. *Penn. Railroad v. The Marie Leonhardt*, 179 F.Supp. 437, 438 (1959). Failure
3 to comply with a subpoena without adequate excuse is a contempt of court. FRCP 45(e).

4 As set forth above, the underlying litigation involves Defendant Micken's
5 business, and Ms. Flemate is/was employed in that business. As such, Ms. Flemate is a
6 critical percipient witness. To date, Plaintiff has noticed the deposition of Ms. Flemate on
7 two separate occasions and communicated several times with the witness to obtain her
8 compliance. Ms. Flemate failed or refused to appear, canceling at the last moment on
9 both occasions. Such conduct is sanctionable.

10 A party may not remain completely silent when he or she regards a notice to take
11 his or her deposition as improper and objectionable. "If she desires not to appear or not to
12 respond, she must apply for a protective order." (FRCP 37 advisory committee's note.)

13 Ms. Flemate has failed to properly object to the subpoena or seek a protective
14 order as required. The physician's assistant's note that was faxed to Plaintiff's counsel is
15 insufficient to excuse Ms. Flemate from complying with a valid subpoena. Her refusal to
16 be deposed is a ruse to impose hardships on Plaintiff, delay the discovery process, and
17 prejudice Plaintiff at trial. Due to Ms. Flemate's continued refusal to appear at her
18 deposition, Plaintiff has been denied an opportunity to prepare for trial, and to obtain
19 information necessary to the preparation of Plaintiff's case.

20 **B. SANCTIONS ARE WARRANTED FOR MS. FLEMATE'S CONDUCT**

21 Pursuant to FRCP 37 (d), if a deponent fails to appear at the deposition after being
22 served with a proper notice, the court in which the action is pending may make "such
23 orders in regard to the failure as are just. . . ." The Court "**shall require** the party failing
24 to act or the attorney advising that party or both to pay the reasonable expenses, including
25 attorney's fees, caused by the failure. . . ." FRCP 37(d) (emphasis added). Accordingly,
26 Plaintiff seeks sanctions in the amount of \$3,169.00.

27 ///

28 ///

1
2 **C. RELIEF FROM THE NOVEMBER 8, 2000 DISCOVERY CUTOFF**
3 **DATE IS APPROPRIATE**

4 Plaintiff has steadily proceeded with attempts to finish all discovery and
5 depositions prior to the Court imposed discovery cutoff deadline of November 8, 2000.
6 As set forth in the accompanying declaration, Maria Flemate has repeatedly failed and
7 refused to be deposed, and her deposition is essential to Plaintiff's trial preparation. It is
8 imperative that the deposition of Maria Flemate, an unrepresented third party, be deposed
9 to uncover the facts in this case. Ms. Flemate stated that she has been advised by counsel
10 to object to her scheduled deposition, however, Plaintiff's counsel has never been
11 provided with the name of any attorney of record for Ms. Flemate. Plaintiff has attempted
12 to meet and confer with Ms. Flemate on this issue to no avail.

13 Therefore, Plaintiffs request that the Court grant relief from the discovery cutoff
14 date to allow sufficient time to complete Ms. Flemate's deposition and for time to
15 complete any follow up discovery, which can only become known after the completion of
16 Ms. Flemate's deposition.

17 **IV.**

18 **CONCLUSION**

19 Pursuant to FRCP 37 and FRCP 26, the Court has wide discretion to make orders
20 which justice requires to protect Plaintiff from hardship and prejudice. Ms. Flemate's
21 failure to appear at her deposition prejudices Plaintiff in its trial preparation.

22 Plaintiff requests that the Court issue an order compelling the deposition of Ms.
23 Flemate, that the Court impose sanctions in the amount of \$3,169.00 for her delay tactics
24 and her willful refusal to be deposed, and that the Court offer relief from the discovery
25 cutoff date to allow sufficient time to complete further discovery as may be revealed by
26 Ms. Flemate's deposition.

27 Dated: October 23, 2000

LAW OFFICES OF SHARON KINSEY

28 By 

SHARON L. KINSEY

Attorneys for Plaintiff,

U-SAVE AUTO RENTAL OF AMERICA

**DECLARATION OF SHARON L. KINSEY
IN SUPPORT OF MOTION TO COMPEL**

I, Sharon L. Kinsey, declare:

1. I am an attorney at law duly admitted to practice before all the courts of the State of California and the attorney of record herein for Plaintiff.
2. This office originally noticed Ms. Flemate's deposition for July 14, 2000. The subpoena was personally served on Ms. Flemate on June 30, 2000. (A true and correct copy of the deposition notice and proof of service is attached collectively as **EXHIBIT A**).
3. On July 14, 2000, I appeared at the offices of Laurie Webb in Nevada for the purpose of taking the deposition of Ms. Flemate. Ms. Flemate did not appear. (A true and correct copy of the reporter's transcript made on that date is attached as **EXHIBIT B**).
4. On August 11, 2000 this office caused to be served on Ms. Flemate, a new deposition subpoena, issued by the court in Nevada, to appear on September 19, 2000 for her deposition. The regular process service attempted to serve Ms. Flemate with the subpoena several times, but was threatened with arrest by Ken Mickens. Thereafter, the Nye County Sheriff's office successfully served the subpoena. (A true and correct copy of the deposition subpoena with proofs of service are collectively attached as **EXHIBIT C**).
5. On August 28, 2000, this office received correspondence from Ms. Flemate, dated August 11, 2000, stating that "her attorney" advised her to object to our deposition subpoena. (A true and correct copy of the letter is attached as **EXHIBIT D**).
6. On September 6, 2000, the Nye County Sheriff's Office personally served Ms. Flemate with a copy of a letter advising her of the need to confirm deposition dates by September 22, 2000. (True and correct copies of this letter and the proof of service is attached collectively as **EXHIBIT E**).

1 7. On September 18, 2000, this office received a facsimile from Advanced Medical
2 Center stating that Ms. Flemate was under their care for "mental anguish resulting
3 from personal stressors" and excusing Ms. Flemate from participating in any
4 depositions in the near future. (A true and correct copy of this facsimile is
5 attached as **EXHIBIT F**).

6 8. On September 18, 2000, this office spoke directly to Ms. Flemate regarding her
7 deposition and Ms. Flemate agreed to reschedule the deposition in a timely manner
8 after her doctors appointment on September 20, 2000. (A true and correct copy of
9 correspondence confirming this conversation by facsimile is attached as **EXHIBIT**
10 **G**).

11 9. On 9-22-00, this office received correspondence from Ms. Flemate cancelling any
12 depositions for at least one month. (A true and correct copy of this letter is
13 attached as **EXHIBIT H**).

14 10. My usual and customary billing rate for this case is \$150.00 per hour.

15 11. On July 14, 2000, I flew to Las Vegas, Nevada to attend the deposition of Ms.
16 Flemate. The following expenses were incurred on that trip for which Ms. Flemate
17 failed to appear:

- 18 a. Airfare: \$219.00
- 19 b. Ground transportation: \$60.00
- 20 c. Reporter's time and transcript: \$153.00
- 21 d. Subpoena fees: \$187.00
- 22 e. 8 hours of attorney time: \$1,200.00

23 12. I spent six attorney hours preparing this motion and the accompanying papers and
24 exhibits for a total of \$900.00.

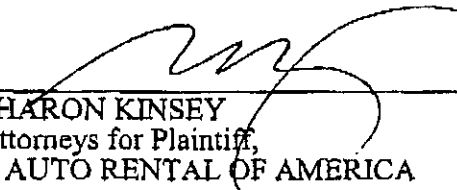
25 13. I anticipate than an additional three hours will be required to review the opposing
26 papers and appear at the hearing of this matter in San Jose, for a total of \$450.00.

27 Therefore, I request that the Court impose sanctions in the amount of \$3,169.00
28

1 against Ms. Flemate and/or attorney advising her to avoid deposition, in favor of
2 Plaintiff.

3 I declare under penalty of perjury and the laws of the State of California that the
4 foregoing is true and correct. This declaration is made on October 23, 2000, at Soquel,
5 California.

6 LAW OFFICES OF SHARON L. KINSEY

7
8 By: 
9 SHARON KINSEY
10 Attorneys for Plaintiff,
11 U-SAVE AUTO RENTAL OF AMERICA
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SEP. -18' 00 (MON) 12:19

THE LAW OFFICES OF SHARON KINSEY

TEL: 831 465 7566

P. 001

TRANSACTION REPORT

Transmission

Transaction(s) completed

NO.	TX DATE/TIME	DESTINATION	DURATION	PGS.	RESULT	MODE
364	SEP. 18 12:18	7757274379	0' 01' 08"	002	OK	N ECM

LAW OFFICES OF SHARON L. KINSEY

2425 Porter Street, Suite 2
 Soquel, CA 95073

Telephone: (831) 465-7565

Fax: (831) 465-1006

FACSIMILE COVER SHEET

Date: 9-18-00

To: Maria Flemer

Company: C/O Pakrup Auto Center

Fax Number: (775) 727-4277

Phone Number:

From: Laura Milani @ The Law Offices of Sharon Kinsey

Re: your deposition USAVE vs. MICKENS

Total Pages: *** 2 ***

Original Will Follow In Mail? ***

EXHIBIT A PAGE 9 OF 39

EXHIBIT A PAGE 1 OF 6

06/28/2000 17:57 384-558

LEGAL WINGS

TEL: 465 7565

PAGE 82

P. 005

ADNA (Rev. 1/84) Subpoena in a Civil Case

PROOF OF SERVICE

DATE 06-30-00

PLACE

1340 Hwy 372, Pahrump NV 89048

SERVED

MARIA FLEMATE

SERVED ON (PRINT NAME)

PERSONAL

MANNER OF SERVICE

Bette M Hamm

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

06-30-00

DATE

Bette M Hamm
SIGNATURE OF SERVER

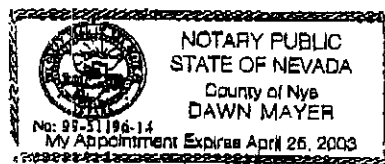
PO Box 1444

ADDRESS OF SERVER

Pahrump NV 89048

Subscribed & Sworn to
before me this 30th day of
June, 2000

[Signature]



Pahrump Automotive
Service Center



1340 Hwy 372
Pahrump, NV 89048

(775) 751-4992

EXHIBIT

A PAGE 10 OF 39

EXHIBIT A PAGE 2 OF 6

Rule 45, Federal Rules of Civil Procedure Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an untrained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT A PAGE 11 OF 39

EXHIBIT A PAGE 3 OF 6

ATTACHED DOCUMENTS LIST to
UNITED STATES DISTRICT COURT CIVIL SUBPOENA
MARIA FLEMATE

Production of Original Documents for July 14, 2000 at 9:30 a.m.

- All documents memorializing a business relationship between Ken and Yvette Mickens and/or Automart and Pahrump Auto Sales;
- All documents memorializing money loaned by Pahrump Auto Sales to Automart and/or Ken Mickens or Yvette Mickens or visa versa;
- All records showing any money that you personally received from Automart USA, Ken or Yvette Mickens;
- All bank records for Pahrump Auto Sales, business and property;
- All documents memorializing the purchase of Pahrump Auto Sales business and property;
- All bank records showing money that you or Pahrump Auto Sales received from Ken or Yvette Mickens or Automart USA;
- The Articles of Incorporation for N-V-Me, Inc.;
- The Articles of Incorporation for CAF-1;
- Th Articles of Incorporation for Competitive Advantage Force-1;
- Any contracts between Pahrump Auto Sales and Automart USA;
- Any contracts between you and Ken and Yvette Mickens
- Any contracts between you and Automart USA;

EXHIBIT A PAGE 12 OF 39

~~EXHIBIT A PAGE 4 OF 6~~

DECLARATION OF SERVICE
USAVE v. AUTOMART

I, MARIA G. VARGAS, declare:

I am employed by the law firm of THE LAW OFFICES OF SHARON KINSEY. My business address is 2425 Porter Street, Suite 2, Soquel, California, 95073. I am over the age of 18 years and not a party to this action.

On June 29, 2000, I served the following document(s) set forth below in the manner indicated:

() Via Facsimile: By facsimile machine to FAX & FILE to complete personal service of said documents upon counsel on Today's Date.

() Personal Service: By personally delivering to the person named below, at the address indicated.

(X) Service by Mail (Deposit): By enclosing a copy in an envelope addressed as shown below and depositing the sealed envelope with the United States Postal Service in Soquel, California, with the postage fully prepaid.


Document(s) Served:

SUBPOENA TO MARIA FLEMATE; LIST OF DOCUMENTS TO BE PRODUCED; and POS

Person(s) Served:

Stanley A. Zlotoff, Esq.
300 First Street, Suite 215
San Jose, CA 95113
Atty for Kenneth & Yvette Mickens

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration was executed on June 29, 2000, at Soquel, California.



MARIA G. VARGAS

EXHIBIT A PAGE 12 OF 39

EXHIBIT A PAGE 5 OF 6

AORR (Rev. 1/94) Subpoena in a Civil Case

Issued by the
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

U-SAVE AUTO RENTAL OF AMERICA

SUBPOENA IN A CIVIL CASE

V.

KENNETH LEE MICKENS

Case Number: 99-53743ASW

TO: MARIA FLEMATE

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Laurie Web & Associates, 517 S. 9th Street, Las Vegas, NV (702) 386-9322	DATE AND TIME July 14, 2000 / 9:30 a
--	---

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):
SEE ATTACHED DOCUMENTS LIST

PLACE Laura Web & Associates, 517 S. 9th Street, Las Vegas,	DATE AND TIME July 14, 2000 / 9:30 :
--	---

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE 6-29-00
ISSUING OFFICER'S NAME, ADDRESS, AND PHONENUMBER Sharon L. Kinsey 2425 Porter Street, Suite 2, Soquel, CA 95073 Tel: (831) 465-7565	

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

* If action is pending in district other than district of issuance, state district under case number.

EXHIBIT A PAGE 6 OF 6

EXHIBIT A PAGE 14 OF 39

ORIGINAL

Scheduled: MARIA FLEMATE 7/14/00

1

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re: KENNETH MICKENS,

Debtor.

U-SAVE AUTO RENTAL OF AMERICA,

Plaintiff,

vs.

KENNETH AND YVETTE MICKENS,

Defendants.

Chapter 7

Case No.
96-5-9506ASW

Adv. Pro. No.
99-5250

NONAPPEARANCE OF MARIA FLEMATE

FOR HER DULY NOTICED DEPOSITION

Taken at Laurie Webb & Associates

517 South Ninth Street

Las Vegas, Nevada 89101

On Friday, July 14, 2000

At 9:30 a.m.

REPORTED BY: MARJORIE H. CROSBY

NV CCR 512, CA CSR 8580, RFR/CONFIDENTIAL PAGE 15 03

LAURIE WEBB & ASSOCIATES (702) 386-9322

EXHIBIT B PAGE 1 OF 9

Scheduled: MARIA FLEMATE 7/14/00

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APPEARANCES OF COUNSEL:

For the Plaintiff: SHARON L. KINSEY, ESQ.
LAW OFFICES OF SHARON KINSEY
2425 Porter Street
Suite 2
Soquel, California 95073

For the Defendants: STANLEY A. ZLOTOFF, ESQ.
BLUER & ZLOTOFF
300 South First Street
Suite 215
San Jose, California 95113
(Not present)

I N D E X

EXHIBITS

MARKED

Plaintiff's:

A Production request for original 4
documents, subpoena and proof of
service

EXHIBIT A PAGE 16 OF 39

Scheduled: MARIA FLEMATE 7/14/00

3

1 I, Marjorie H. Crosby, NV CCR NO. 512, a
2 certified shorthand reporter for the State of Nevada,
3 do hereby certify that:

4 At the request of SHARON L. KINSEY, ESQ.,
5 of the LAW OFFICES OF SHARON KINSEY, attorney for
6 the Plaintiff in the above-entitled cause, I appeared
7 at 517 South Ninth Street, Las Vegas, Nevada at 9:30
8 a.m., on Friday, July 14th, 2000, for the purpose of
9 administering the oath to and reporting the deposition
10 of MARIA FLEMATE;

11 That at 10:25 a.m., MARIA FLEMATE, having
12 failed to appear, the following record was made:

13 MS. KINSEY: We are here on the record. It
14 is Friday, July 14th, 2000, at almost 10:25 in the
15 morning. We were scheduled to take the deposition of
16 Maria Flemate, F-l-e-m-a-t-e.

17 Miss Flemate was served with a subpoena
18 issued by the United States District Court, Northern
19 District of California, in the matter of U-Save Auto
20 Rental of America vs. Kenneth Lee Mickens, Case No.
21 99-53743 ASW.

22 Miss Flemate was served with the subpoena on
23 June 30th, 2000, at 10:45 a.m. in the morning at
24 Pahrump Automotive Service Center, 1340 Highway 372,
25 Pahrump, Nevada, and it was served by Betty M. Hamm,

Scheduled: MARIA FLEMATE 7/14/00

4

1 H-a-m-m, and there's a valid signed proof of service
2 that is also notarized.

3 The deposition was scheduled to take place at
4 Laurie Webb & Associates at 517 South 9th Street in Las
5 Vegas, and the notice was for 9:30 a.m.

6 In addition to the notice itself there was a
7 production request for original documents, a copy of
8 which will be made Exhibit A, along with the subpoena
9 and proof of service itself.

10 (The documents referred to were marked as
11 Plaintiff's Exhibit A for identification.)

12 MS. KINSEY: Just for the record, Stanley
13 Zlotoff, who is the attorney for Kenneth and Yvette
14 Mickens in their bankruptcy case, had served on the Law
15 Office of Sharon Kinsey by fax yesterday, July 13th, an
16 objection to subpoena as far as the record production
17 is concerned.

18 The objection is on a pleading with
19 Mr. Zlotoff's caption and it is noted that he is
20 attorney specially appearing for Maria Flemate, not
21 that he is representing her. The objection is signed
22 by both Mr. Zlotoff and Miss Flemate.

23 It is important to note that pursuant to FRCP
24 45, Sub C, Sub 2, Sub B, only the witness can prevent
25 disclosure by objecting. The party to whom the

Scheduled: MARIA FLEMATE 7/14/00

5

1 subpoenaed records pertain cannot object. The only
2 option for them is a protective order or a motion to
3 quash.

4 It is unclear, indeed, it appears that it is
5 intentional to be confusing as to whether or not
6 Mr. Zlotoff is proposing to represent Miss Flemate and
7 how and whether the objection was initiated by Miss
8 Flemate or was something drafted by Mr. Zlotoff and
9 merely given to Miss Flemate to sign.

10 The witness, who the subpoena is directed to,
11 may, of course, object at any time prior to the
12 deposition.

13 If the document that was faxed to our office
14 is actually Miss Flemate's objection and not Kenneth
15 Mickens' objection, then it was timely made and
16 prevents the production of documents at the deposition
17 if she were to have appeared. However, it appears that
18 this objection was a rouse because it states grounds
19 for objecting that only pertain to a party, i.e.,
20 relevance.

21 Miss Flemate should not be able to object on
22 the grounds of relevance because she is a nonparty. As
23 a nonparty, she would have no idea what documents might
24 lead to the discovery of admissible evidence. It seems
25 that she lacks standing to object that the request is

LAURIE WEBB & ASSOCIATES (702) 386-9322

EXHIBIT B PAGE 5 OF 9

EXHIBIT

A

PAGE

19

OF

29

Scheduled: MARIA FLEMATE 7/14/00

6

1 not calculated to lead to anything discoverable in this
2 proceeding, which is part of the objection signed by
3 Miss Flemate.

4 She also objected that the request for the
5 articles of incorporation is irrelevant to any issue in
6 this proceeding and that it will not likely lead to
7 objectionable evidence. Miss Flemate can object on the
8 grounds of privilege, privacy or undue burden, however,
9 she does not have standing again to object on the basis
10 of relevance.

11 Mr. Zlotoff, as the attorney for the debtors,
12 should have filed for a protective order or motion to
13 quash.

14 Further, Mr. Zlotoff's special appearance
15 appears to be a rouse. By objecting on the grounds of
16 relevance, he is clearly acting on behalf of the party
17 debtor and, of course, as stated before, a party cannot
18 make an objection but must file a motion to quash or
19 file for protective order before the deposition.

20 Further, it seems clear that Mr. Zlotoff
21 cannot possibly represent both the debtors, Kenneth and
22 Yvette Mickens, and Miss Flemate, as there would be an
23 impermissible conflict of interest as Miss Flemate's
24 interests are absolutely in conflict with the interests
25 of the Mickens.

Scheduled: MARIA FLEMATE 7/14/00

7

1 This deposition is not concluded, it is
2 merely suspended until such time as we can issue a
3 warrant by the court for contempt of a court-issued
4 document, and we will also be bringing a motion to
5 compel for the documents as well.

6 (ENDING TIME: 10:30 A.M.)
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EXHIBIT A PAGE 21 OF 39

LAURIE WEBB & ASSOCIATES (702) 386-9322

EXHIBIT B PAGE 7 OF 9

Scheduled: MARIA FLEMATE 7/14/00

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REPORTER'S CERTIFICATION

I, MARJORIE H. CROSBY, Certified Shorthand Reporter, do hereby certify I took down in stenotype all of the proceedings had in the before-entitled matter at the time and place indicated and that thereafter said shorthand notes were transcribed into typewriting at and under my direction and supervision and that the foregoing transcript constitutes a full, true and accurate record of the proceedings had.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 18th day of July, 2000.

MARJORIE H. CROSBY, RPR, RMR

NV CCR NO. 512

CA CSR NO. 8580

EXHIBIT A PAGE 22 OF 39

LAURIE WEBB & ASSOCIATES (702) 386-9322

EXHIBIT B PAGE 8 OF 9

REPORTER'S CERTIFICATION

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I, MARJORIE H. CROSBY, Certified Shorthand Reporter, do hereby certify I took down in stenotype all of the proceedings had in the before-entitled matter at the time and place indicated and that thereafter said shorthand notes were transcribed into typewriting at and under my direction and supervision and that the foregoing transcript constitutes a full, true and accurate record of the proceedings had.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 18th day of July, 2000.

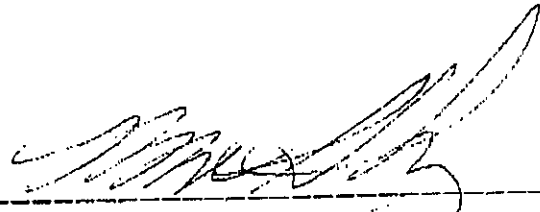

MARJORIE H. CROSBY, RPR, RMR
NV CCR NO. 512
CA CSR NO. 8580

EXHIBIT A PAGE 23 OF 39

EXHIBIT B PAGE 9 OF 9

D255 (11/81) Subpoena in an Adversary Proceeding

United States Bankruptcy Court

DISTRICT OF NEVADA

In re KENNETH MICKENS
Debtor

SUBPOENA IN AN ADVERSARY PROCEEDING

U-SAVE AUTO RENTAL OF AMERICA,
Plaintiff

Case No. 96-5-9506ASW

V.

Chapter 7

KENNETH LEE MICKENS, AND
YVETTE MICKENS, et al.
Defendant

Adv. Proc. No. 99-5250

To:

☐ YOU ARE COMMANDED to appear in the United States Bankruptcy Court at the place, date, and time specified below to testify in the above adversary proceeding.

PLACE

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above adversary proceeding.

PLACE

Laurie Web & Associates
517 South 9th Street
Las Vegas, Nevada

Tel.: (702) 386-9322

DATE AND TIME

September 19, 2000
9:00 a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

****See Attached list of Documents****

PLACE

Laurie Web & Associates
517 South 9th Street
Las Vegas, Nevada

Tel.: (702) 386-9322

DATE AND TIME

September 19, 2000
9:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any subpoenaed organization not a party to this adversary proceeding shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Fed.R.Civ.P. 30(b)(6) made applicable in adversary proceedings by Rule 7030, Fed.R.Bankr.P.

ISSUING OFFICER SIGNATURE AND TITLE

DATE

Attorney for Plaintiff

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Sharon L. Kensey, Attorney at Law (admitted to practice in the Northern District of CA)
2425 Porter Street, Suite 2, Soquel, CA 95073 (831) 465-7565

EXHIBIT C PAGE 1 OF 4

JUL. -27' 00 (THU) 09:48

THE LAW OFFICES OF SHARON KINSEY

TEL: 831 465 7565

P. 001

TRANSACTION REPORT

Transmission
Transaction(s) completed

NO.	TX DATE/TIME	DESTINATION	DURATION	PGS.	RESULT	MODE
087	JUL. 27 09:44	3848638	0' 02' 50"	005	OK	N ECM

LAW OFFICES OF SHARON L. KINSEY
2425 Porter Street, Suite 2
Sequel, CA 95073
Telephone: (831) 465-7565
Fax: (831) 465-1006

FACSIMILE COVER SHEET

Date: July 27, 2000

To: Legal Wings
Company: Legal Wings
Fax Number: (702) 384-8638 Phone Number: (702) 384-0305
From: Sharon L. Kinsey
Re: USAVE v. MICKENS
Total Pages: 5 Original Will Follow In Mail? NO

EXHIBIT A PAGE 25 OF 39

EXHIBIT C PAGE 2 OF 4

U-Save Auto Rental of America, Plaintiff,
vs. Kenneth Mickens, Defendant
U.S. District Court, Norther District of California
Case no. 99-53743 ASW
ATTACHMENT TO SUBPOENA IN A CIVIL CASE
DOCUMENTS TO BE PRODUCED AT DEPOSITION

The witness must produce Originals of all of the following documents that are in the witness' possession, custody, or control:

1. All contracts and other documents memorializing any contract, agreement, business relationship, or arrangement between or among Maria Flemate, Pahrump Auto Sales, Ken Mickens, Yvette Mickens, and/or Automart.
2. All promissory notes, checks, bank records, and other documents evidencing any money received at any time from Pahrump Auto Sales or Maria Flemate by Automart, Ken Mickens, or Yvette Mickens, whether by loan, payment, gift, compensation or other means.
3. All promissory notes, checks, bank records, and other documents evidencing any money received at any time from Automart, Ken Mickens, or Yvette Mickens by Pahrump Auto Sales or Maria Flemate, whether by loan, payment, gift, compensation or other means.
4. All contracts, promissory notes, checks, escrow papers, and other documents memorializing the purchase of the business and property of Pahrump Auto Sales
5. The Articles of Incorporation for N-V-Me, Inc.;
6. The Articles of Incorporation for CAF-1;
7. The Articles of Incorporation for Competitive Advantage Force-1;

EXHIBIT A PAGE 26 OF 39

EXHIBIT C PAGE 3 OF 4

DECLARATION OF SERVICE
USAVE v. AUTOMART

I, MARIA G. VARGAS, declare:

I am employed by the law firm of THE LAW OFFICES OF SHARON KINSEY. My business address is 2425 Porter Street, Suite 2, Soquel, California, 95073. I am over the age of 18 years and not a party to this action.

On July 26, 2000, I served the following document(s) set forth below in the manner indicated:

() Via Facsimile: By facsimile machine to FAX & FILE to complete personal service of said documents upon counsel on Today's Date.

() Personal Service: By personally delivering to the person named below, at the address indicated.

(X) Service by Mail (Deposit): By enclosing a copy in an envelope addressed as shown below and depositing the sealed envelope with the United States Postal Service in Soquel, California, with the postage fully prepaid.

Document(s) Served: SUBPOENA TO MARIA FLEMATE & LIST OF DOCUMENTS TO BE PRODUCED

Person(s) Served:

Stanley A. Zlotoff, Esq.
300 First Street, Suite 215
San Jose, CA 95113
Atty for Kenneth & Yvette Mickens

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration was executed on July 26, 2000, at Soquel, California.

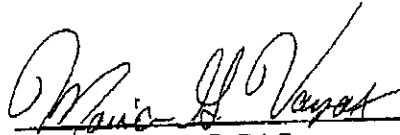

MARIA G. VARGAS

EXHIBIT A PAGE 27 OF 39

EXHIBIT C PAGE 4 OF 4

August 11, 2000

Sharon Kinsley
2425 Porter St., Ste. 2
Soquel, CA 95073

Dear Ms. Kinsey:

Per my attorney, I have been advised to respond to your subpoena in writing regarding any objection that I may have to the subpoena. I am objecting to all that has been requested in regard to this subpoena. I had nothing to do with Automart U.S.A., so I feel your request is frivolous.

Thank you,

Maria R. Flemate

Maria Flemate

EXHIBIT A PAGE 28 OF 39

REVIEWED

EXHIBIT D PAGE 1 OF 1

RECEIPT
R003 100 030



Law Offices of Sharon Kinsey
Specializing in Consumer Fraud

Sharon L. Kinsey, Esq.
Bruce Janke, Esq.

FROM:
Law Offices of Sharon Kinsey

RE: USAVE

SEND TO:
Maria Flemate
c/o Pahrump Auto Sales
So. Highway 160
Pahrump - NV 89048

FEES:
Postage 0.33
Certified Fee 1.40
Special
Restricted 1.25
Receipt
TOTAL \$ 2.98
POSTMARK OR DATE

August 31, 2000

Ms. Maria Flemate
Pahrump, NV

RE: USAVE v. Mickens
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
ACTION # 96-5-9506ASW

Dear Ms. Flemate:

This letter is in response to your correspondence dated August 11, 2000. Please be advised that this office only now just received said correspondence on August 28, 2000.

Your objection to our subpoena for your deposition and production of documents is not valid. Federal Civil Rule 45(e) states:

(e) Contempt. "Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued..."

Therefore, it is mandatory that you be present with the documents requested on September 19, 2000 at 9:00 a.m. at the address on your subpoena of 517 S. 9th Street, Las Vegas, NV. Your oral testimony and production of documents is crucial to assist in the completion of the discovery process in association of the above referenced case.

In your correspondence to us you also stated that you have been advised by legal counsel. If you have retained an attorney to represent you, please have them contact this office immediately.

cc: C. Kent

Sincerely,

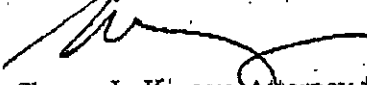

Sharon L. Kinsey, Attorney for
Usave

EXHIBIT A PAGE 29 OF 39

EXHIBIT E PAGE 1 OF 6



Law Offices of Sharon Kinsey
Specializing in Consumer Fraud

Sharon L. Kinsey, Esq.
Bruce Janke, Esq.

August 31, 2000

Ms. Maria Flemate
Phurump, NV

RE: USAVE v. Mickens
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
ACTION # 96-5-9506ASW

Dear Ms. Flemate:

This letter is in response to your correspondence dated August 11, 2000. Please be advised that this office only now just received said correspondence on August 28, 2000.

Your objection to our subpoena for your deposition and production of documents is not valid. Federal Civil Rule 45(e) states:

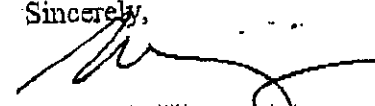
(e) Contempt. *"Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued..."*

Therefore, it is mandatory that you be present with the documents requested on September 19, 2000 at 9:00 a.m. at the address on your subpoena of 517 S. 9th Street, Las Vegas, NV. Your oral testimony and production of documents is crucial to assist in the completion of the discovery process in association of the above referenced case.

In your correspondence to us you also stated that you have been advised by legal counsel. If you have retained an attorney to represent you, please have them contact this office immediately.

cc: C. Grant

Sincerely,


Sharon L. Kinsey, Attorney for

Usave

EXHIBIT A PAGE 30 OF 39

EXHIBIT E PAGE 2 OF 6

STATE OF NEVADA

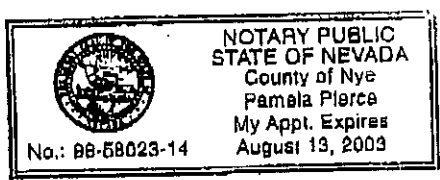
COUNTY OF NYE

AFFIDAVIT OF SERVICE

MARK MEDINA, being duly sworn says: That at all times herein affiant was over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received the Subpoena on the 11th day of AUG, 19 2000, and served the same on the 11th day of AUG, 19 2000 by delivering a copy to the witness at (state address) PAHNING AUTO SALES HWY 372

[Signature] NCSO #42106
Signature of Affiant

SUBSCRIBED AND SWORN to before me this 31 day of August 19 2000
Pamela Pierce
Notary Public in and for the
County of NYE
State of Nevada



ITEMS TO BE PRODUCED

[Lined area for listing items to be produced]

LAW OFFICES OF SHARON L. KINSEY

2425 Porter Street, Suite 2
Soquel, CA 95073
Telephone: (831) 465-7565
Fax: (831) 465-1006

FACSIMILE COVER SHEET

Date: September 1, 2000

To: Georgiana, Sheriff's Department
Fax Number: 775/482-8195 Phone Number: 775/482-8110
From: Cheryl Snider, Legal Secretary
Re: U-Save v. Mickens
Total Pages: 2 Original Will Follow In Mail? NO

Dear Georgiana:

Here is the letter we need to have served on Maria Flemate. The best address I have for her is c/o Parumph Auto Sales, So. Hwy. 160, Parumph, NV. Your Department has served a deposition subpoena on her, so perhaps you have a better address that I. I have heard that Parumph Auto Sales has two offices.

Ms. Flemate is attempting to weasel out of being deposed, so we really want to make sure that since she is without counsel, that we make every effort to ensure her presence. Her depo is scheduled for 9/19/00.

Please send your bill to this office at the address on our letterhead and this fax. Thanks for your assistance. If you have any questions, please call.

Cheryl Snider

CONFIDENTIALITY WARNING:

The information contained in this facsimile is privileged and confidential information intended for use only by the individual or entity named above. If you receive this facsimile and are not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this facsimile is prohibited. If you have received this facsimile in error, please notify us by telephone immediately. Thank you.

EXHIBIT A PAGE 32 OF 39 EXHIBIT E PAGE 4 OF 6

SEP. -01' 00 (FRI) 16:00

THE LAW OFFICES OF SHARON KINSEY

TEL: 831 465 7565

P. 001

TRANSACTION REPORT

Transmission
Transaction(s) completed

NO.	TX DATE/TIME	DESTINATION	DURATION	PGS.	RESULT	MODE
976	SEP. 1 15:59	7024828195	0' 01' 05"	002	OK	N ECM

LAW OFFICES OF SHARON L. KINSEY

2425 Porter Street, Suite 2

Soquel, CA 95073

Telephone: (831) 465-7565

Fax: (831) 465-1006

FACSIMILE COVER SHEET

Date: September 1, 2000

To: Georgiana, Sheriff's Department
Fax Number: 775/482-8195 Phone Number: 775/482-8110
From: Cheryl Snider, Legal Secretary
Re: U-Save v. Mickens
Total Pages: 2 Original Will Follow In Mail? NO

Dear Georgiana:

Here is the letter we need to have served on Maria Flemate. The best address I have for her is c/o Parumph Auto Sales, So. Hwy. 160, Parumph, NV. Your Department has served a deposition subpoena on her, so perhaps you have a better address that I. I have heard that Parumph Auto Sales has two offices.

Ms. Flemate is attempting to weasel out of being deposed, so we really want to make sure that since she is without counsel, that we make every effort to ensure her presence. Her depo is scheduled for 9/19/00.

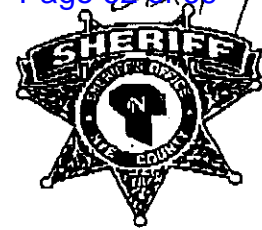
Please send your bill to this office at the address on our letterhead and this fax. Thanks for your assistance. If you have any questions, please call.

4 PAGE 33 OF 39

EXHIBIT PAGE 5 OF 10



Nye County Sheriff's Office
PO Box 831 Tonopah NV 89049



Return of Service/Non-Service

☒ Service ☐ Non Service

I hereby certify that I received the within:

☐ Subpoena ☐ Summons ☐ Complaint ☐ Petition ☐ Notice ☐ Order

☒ Other LETTER

and personally ☒ served ☐ did not serve the same upon

MARIA FIDMATE

x Maria R. Fleno

a copy of the above to the said individual(s) in Nye County Nevada

Reason for non service if not served:

Wade A. Lieseke, Jr.

Wade A. Lieseke, Jr. Sheriff
Nye County Sheriff's Office

Joseph Lucid 4243
Deputy Sheriff

09-06-00
Date

Time 1450

Attempts Made

DATE	TIME	INITIAL
09-03-00	1651	TM

Advanced Medical Center
1151 South Highway 160
Pahrump Nevada 89048
(775) 727-5509

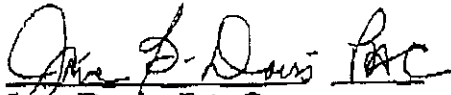
September 15, 2000

To Whom It May Concern:

I am writing this correspondence to substantiate the need to excuse Ms. Maria Flemate from participating in a deposition in the near future. Ms. Flemate is currently under our care for mental anguish as a result of personal stressors. We have advised her to avoid further emotional stress.

If there are any further questions please feel free to contact us.

Sincerely,


Jane Davis, PA-C

=== COVER PAGE ===

TO: _____

FROM: PAHRUMP AUTO CENTER

FAX: 7757274279

TEL: 7757271051

COMMENT:



Law Offices of Sharon Kinsey
Specializing in Consumer Fraud

Sharon L. Kinsey, Esq.
Bruce Junke, Esq.
Alison Perry, Esq.
Carole K. Johnston, Esq.

September 18, 2000

Maria Flemate
c/o Pahrump Auto Center
Pahrump, Nevada

Sent Via Facsimile (775) 727-4279

Dear Ms. Flemate:

This letter will confirm our telephone conversation of today's date with regards to your immediate medical condition and your unavailability to appear at your scheduled deposition. I informed you that without a proper objection served on this office your deposition is mandatory. However, due to your treating physician advising this office that you are unable to appear on Tuesday, September 19, 2000, this office is willing to move your deposition to another date and time in the future. You have stated that you would contact me after your Wednesday, September 20, 2000 doctors appointment to confirm another available date or time to reschedule the deposition. If this office does not have a confirmed rescheduled date of your deposition by Friday September 22, 2000, we will bring a motion for an order to compel your attendance and for contempt sanctions with the Federal Court in which the subpoena was issued.

Please confirm a date directly with myself or Ms. Larcher on or before September 22, 2000.

Sincerely,

Laura Milani, Paralegal to
Sharon L. Kinsey

cc: Mr. Zlotoff
Flemateltr.9-18-00

EXHIBIT A PAGE 37 OF 39

EXHIBIT G PAGE 1 OF 1

REVIEWED

Sept. 22, 2000

Sharon L. Kinsey
2425 Porter St. #2
Soquel, CA 95073
Attn: Tyler
831 465-1006 Fax

Re: Maria Flemate-Depo. U-Save vs. Mickens

Last week I spoke to Laura Milani regarding my doctor's letter excusing me from attending my deposition. I was supposed to come up with some future dates so my deposition could be rescheduled. I will not be available for at least a month. At that time, I will check with my doctor again.

Sincerely,
Maria R. Flemate

EXHIBIT A PAGE 38 OF 39

EXHIBIT H PAGE 1 OF 1

DECLARATION OF SERVICE
USAYE v. AUTOMART

I, CHERYL SNIDER, declare:

I am employed by the law firm of THE LAW OFFICES OF SHARON KINSEY. My business address is 2425 Porter Street, Suite 2, Soquel, California, 95073. I am over the age of 18 years and not a party to this action.

On October 23, 2000, I served the following document(s) set forth below in the manner indicated:

(X) Via Facsimile: By facsimile machine at the fax number(s) shown below. I caused the machine to print a transmission record of the transmission and no error was reported by the machine.

() Personal Service: By personally delivering to the person named below, at the address indicated.

(X) Service by Mail (Deposit): By enclosing a copy in an envelope addressed as shown below and depositing the sealed envelope with the United States Postal Service in Soquel, California, with the postage fully prepaid.

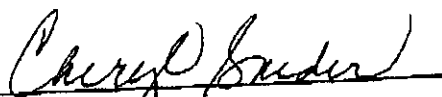
Document(s) Served: NOTICE OF MOTION AND MOTION TO COMPEL DEPOSITION OF MARIA FLEMATE & REQUEST FOR SANCTIONS; POINTS AND AUTHORITIES; DECLARATION OF SHARON KINSEY; and [PROPOSED] ORDER GRANTING MOTION TO COMPEL DEPOSITION OF MARIA FLEMATE AND REQUEST FOR SANCTIONS

Person(s) Served:

Stanley A. Zlotoff, Esq.
300 First Street, Suite 215
San Jose, CA 95113
Facsimile: (408) 287-7645
Atty for Kenneth & Yvette Mickens

Ms. Maria Fiemate (Served via facsimile only as plaintiff is unaware of mailing address)
Phrumph, NV
Facsimile: (775) 727-4279

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration was executed on October 23, 2000, at Soquel, California.


CHERYL SNIDER

DECLARATION OF SERVICE
USAVE v. AUTOMART

I, CHERYL SNIDER, declare:

I am employed by the law firm of THE LAW OFFICES OF SHARON KINSEY. My business address is 2425 Porter Street, Suite 2, Soquel, California, 95073. I am over the age of 18 years and not a party to this action.

On November 16, 2000, I served the following document(s) set forth below in the manner indicated:

() **Via Facsimile**: By facsimile machine at the fax number(s) shown below. I caused the machine to print a transmission record of the transmission and no error was reported by the machine.

() **Personal Service**: By personally delivering to the person named below, at the address indicated.

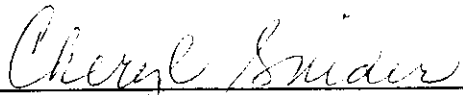
(X) **Service by Mail (Deposit)**: By enclosing a copy in an envelope addressed as shown below and depositing the sealed envelope with the United States Postal Service in Soquel, California, with the postage fully prepaid.

Document(s) Served: PLAINTIFF'S REQUEST FOR A MISCELLANEOUS CASE NUMBER FOR THE PURPOSE OF HEARING ATTACHED MOTION TO COMPEL MARIA FLEMATE FOR DEPOSITION AND FOR SANCTIONS FOR VIOLATION OF SUBPOENA

Person(s) Served:

Stanley A. Zlotoff, Esq.
300 First Street, Suite 215
San Jose, CA 95113
Facsimile: (408) 287-7645
Atty for Kenneth & Yvette Mickens

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration was executed on November 16, 2000, at Soquel, California.


CHERYL SNIDER

DECLARATION OF SERVICE
USAVE v. AUTOMART

I, CHERYL SNIDER, declare:

I am employed by the law firm of THE LAW OFFICES OF SHARON KINSEY. My business address is 2425 Porter Street, Suite 2, Soquel, California, 95073. I am over the age of 18 years and not a party to this action.

On November 16, 2000, I served the following document(s) set forth below in the manner indicated:

☒ **Via Facsimile**: By facsimile machine at the fax number(s) shown below. I caused the machine to print a transmission record of the transmission and no error was reported by the machine.

☐ **Personal Service**: By personally delivering to the person named below, at the address indicated.

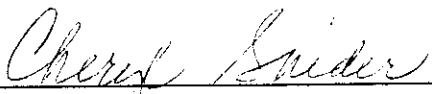
☐ **Service by Mail (Deposit)**: By enclosing a copy in an envelope addressed as shown below and depositing the sealed envelope with the United States Postal Service in Soquel, California, with the postage fully prepaid.

Document(s) Served: PLAINTIFF'S REQUEST FOR A MISCELLANEOUS CASE NUMBER FOR THE PURPOSE OF HEARING ATTACHED MOTION TO COMPEL MARIA FLEMATE FOR DEPOSITION AND FOR SANCTIONS FOR VIOLATION OF SUBPOENA

Person(s) Served:

Ms. Maria Flemate (Served without Exhibit A, via facsimile only, as plaintiff is unaware of
Pahrump, NV Ms. Flemate's mailing address)
Facsimile: (775) 727-4279

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration was executed on November 16, 2000, at Soquel, California.



CHERYL SNIDER